

EXHIBIT D

**THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

In the Matter of the Establishment)	
Inspection of:)	
)	
Mar-Jac Poultry, Inc.)	Case No.
1020 Aviation Boulevard)	
Gainesville, Georgia 30501)	
)	
Employer.)	

AFFIDAVIT OF COMPLIANCE SAFETY AND HEALTH OFFICER
ROBIN BENNETT

COUNTY OF DEKALB
STATE OF GEORGIA

I, Robin Bennett, am over 18 years of age, legally competent to give this affidavit, and have personal knowledge of the facts set forth in this affidavit and being first duly sworn, do hereby state:

1. I am a Compliance Safety and Health Officer ("CSHO") in the Atlanta East, Georgia Area Office of the Occupational Safety and Health Administration ("OSHA"), United States Department of Labor. In that capacity, I conduct investigations to determine if an employer is in compliance with the Occupational Safety and Health Act ("the Act"), 29 U.S.C. § 651 *et. seq.*
2. This affidavit is submitted in support of my application for issuance of an administrative inspection warrant pursuant to Section 8 of the Act of the work

establishment known as Mar-Jac Poultry, Inc., located at 1020 Aviation Boulevard, Gainesville, Georgia 30503 (hereinafter “Mar-Jac,” “employer,” and/or “the worksite”). Mar-Jac is a poultry processing plant that has approximately 1,112 employees at its worksite in Gainesville, Georgia. According to its website, Mar-Jac processes 2,000,000 birds per week and it ships its products worldwide.¹

3. On February 4, 2016, OSHA received a referral from Mar-Jac, the employer, stating that an employee had been hospitalized due to an accident that occurred on February 3, 2016. See enclosed Exhibit A. Specifically, as discussed below, a maintenance employee received first, second, and third degree burns to the face and arms from an arc flash while troubleshooting and repairing a 1200 amp breaker/480 volt panel. The employer reported this accident within 24 hours of its occurrence, as required by 29 C.F.R. § 1904.39(a)(2).

4. Based on this employer referral, an inspection began on February 8, 2016. The purpose of the inspection was to investigate the accident.

5. In addition to conducting an investigation of this accident, OSHA intends to expand the investigation to include the poultry processing hazards listed in the 2015 OSHA Directive CPL 16/08, Regional Emphasis Program for Poultry

¹ Available at <http://www.marjacpoultry.com/about-us/> (last accessed on March 3, 2016).

Processing Facilities (“Poultry REP”) and the National OSHA Office’s October 28, 2015 Memorandum “Inspection Guidance for Poultry Slaughtering and Poultry Processing Establishments.”² The poultry processing hazards listed in the Poultry REP including record keeping, medical records, ergonomics, process safety management, confined spaces, electrical, hazard communication, hexavalent chromium, machine guarding/ lockout tag out (“LOTO”), and biological hazards. The Poultry REP also describes lists “other hazards” that are common in the poultry processing industry including noise, chemicals, thermal, struck-by vehicle hazards, sanitation, and slip, trips, and falls.

6. The Poultry REP applies to both program and unprogrammed inspections. Under the OSHA Field Operations Manual (“OSHA FOM”) Chapter 2 (IV)(H)(1), an unprogrammed inspection is defined as “[i]nspections scheduled in response to alleged hazardous working conditions identified at a specific worksite....” Unprogrammed inspections include referral based inspections such as the employer referral that was received in this matter. OSHA FOM Chapter 2 (IV)(H)(1)(d).

7. On the first day of the inspection, February 8, 2016, I was

² At the time of my initial investigation I referenced the National OSHA Office’s October 28, 2015 Memorandum “Inspection Guidance for Poultry Slaughtering and Poultry Processing Establishments.” *Available at* https://www.osha.gov/dep/enforcement/poultry_processing_10282015.html (last opened March 2, 2016). The poultry processing hazards in the National OSHA Office Memo and the poultry processing hazards in the Poultry REP are very similar and/or the same.

accompanied by Maria Martinez, Industrial Hygienist ("IH"), and Kia McCullough, Assistant Area Director ("AAD") for the Atlanta East Area Office. Upon our arrival, we met with representatives for the employer including Teri Middle Brooks, HR Director, and Joel Williams, Complex Manager. These employer representatives contacted counsel for the employer, Larry Stine. I spoke with Mr. Stine, who stated that the employer would comply with the accident investigation fully but denied any expansion of the investigation.

8. The employer limited my investigation to the location of the accident, which was isolated from the remainder of the facility. Other than the maintenance employees involved in the accident, very few employees came into area where the accident occurred.

9. Based on the employer's refusal to permit the inspection of the above cited hazards and its refusal to permit me to inspect other areas of the facility, the initial investigation continued as a safety accident investigation for the remainder of the week of February 8, 2016. Therefore, IH Martinez and AAD McCullough did not accompany me for the remainder of the safety investigation.

10. My initial safety investigation of the accident uncovered the following facts:

- a. The accident that occurred on February 3, 2016 involved two maintenance employees, Craig Norrell and Maintenance Supervisor Jonathan Parks.
- b. As a result of my initial investigation, I learned that the employer has not created specific electrical LOTO procedures nor has the employer implemented an electrical safe work practices program. Based on my investigation, I determined that the lack of a LOTO program and/or an electrical safe work practices program is directly related to Mr. Norrell's near fatal injury. The employer provided me with a copy of an "Arc Flash and Ergonomics Program Evaluation" assessment completed by an outside contractor, "iSi Environmental." See Exhibit C.
- c. The employer did not provide me with a complete copy of this evaluation; I was only provided with a copy of the evaluation as to the Arc Flash Program. Exhibit C. The outside contractor's analysis as to the employer's ergonomics program, or lack thereof, was omitted. Exhibit C.

11. The hazards uncovered as a result of my initial investigation include some of the hazards listed in the Poultry REP including LOTO and electrical hazards. As the facility does not have a LOTO program in place, my investigation

must be expanded beyond the isolated location of the accident to include an investigation into site wide electrical hazards. Though the employer has not explicitly stated that I cannot investigate the LOTO and electrical related hazards of the entire facility, I concluded that my inspection was limited as the employer did not let me go into any other area of the facility other than the isolated location where the inspection occurred. I also anticipate the employer would not permit me to investigate facility wide hazards related to its lack of a LOTO program and the electrical hazards because of the employer's interference with my investigation, as described in detail below.

12. Upon our arrival on February 8, 2016, the employer provided us with the OSHA 300 Logs for the last three years including their current logs for 2016. See enclosed Exhibit B. AAD McCullough reviewed the OSHA 300 Logs and she found that they contain a number of the hazards listed in the Poultry REP which are explained in detail in her affidavit. Exhibit B; Exhibit G. These hazards include PPE, machine guarding hazards, musculoskeletal injuries and ergonomic hazards, power industrial truck hazards, chemical and biological hazards, and slips trips, and falls. Exhibit G.

13. OSHA conducted an investigation of the employer in 2009 and entered into a settlement agreement. Exhibit F. Since 2009, OSHA has not investigated the employer. The citations from the 2009 investigation that are cited

in the settlement agreement include exposure to hazardous chemicals and biological hazards, process safety management, and confined spaces. Exhibit F.

14. The effects of hexavalent chromium, one of the hazards listed in the Poultry REP, can take a few years depending of the exposure level. Therefore OSHA needs to conduct interviews with the employees to ascertain how much hexavalent chromium employees' are exposed to.

15. Though the employer's attorney Larry Stine assured me that his firm and his client, the employer, would cooperate fully with the investigation into the accident, there was significant interference with my investigation into this accident as follows:

- a. On February 12, 2016, I asked to see the injured employee's work tools that he would have been using the day of the arc flash and his injury. The tools were located in Mr. Norrell's locker which would require me to walk through the facility. The attorney for the employer, Mark Waschack,³ stated that the only way I would be allowed to walk through the facility to the employee's locker is if I put a box over my head in order to "blind" me from any plain view hazards.

³ Mr. Waschack is an attorney at the same firm as the employer's other counsel Larry Stine.

- b. I told Mr. Washack that no one would be coming near and/or touching my head. Mr. Waschak stated that he had previously done this to two CSHOs in two 2 previous OSHA inspections and there was “National Office direction” on how to do this. To my knowledge there is no National Office direction and/or protocol whereby covering my head with a box would be permissible during an investigation. I again stated that no person would touch my head or place anything over my head and/or eyes.
- c. After Mr. Washack asked me to put a box over my head, the complex manager, Joel Williams, asked Mr. Washack to speak with him privately. Upon their return, Mr. Waschak explained that he was not attempting to prevent the inspection – only to prevent me from seeing other portions of the facility.
- d. In addition to the above referenced interference, Mr. Waschak also attempted to intervene in my interviews with non-management employees, including the injured employee. I told him that his presence during non-management interviews was not permissible. During my interviews with managers for the employer, Mr. Warshak attempted to speak on behalf of the managers instead of allowing the managers to answer my questions directly.

16. Despite Mr. Warschak and/or the employer's interference, my investigation, including the receipt of the OSHA 300 Logs, shows that the investigation must be expanded beyond the hazards referenced in the employer's referral. The employer has stated via counsel that no such expansion will be permitted without a warrant.

Robin S. Bennett
Robin Bennett
Compliance Safety and Health Officer
Occupational Safety and Health
Administration
U.S. Department of Labor
Atlanta-East Area Office

Sworn and subscribed to before me
this 29th day of March 2016.

Amy S. Hilton
NOTARY PUBLIC

My Commission Expires: June 14, 2019

AMY S HILTON
NOTARY PUBLIC
Gwinnett County
State of Georgia
My Comm. Expires June 14, 2019